

**Ulster County Industrial Development Agency  
Minutes  
June 13, 2012**

A regular monthly meeting of the Ulster County Industrial Development Agency was held at 8:00 a.m., Wednesday, June 13, 2012, Conference Room 108, Business Resource Center, Development Court, Kingston, NY.

The following agency members were present:

Paul Colucci	Assistant Chair/Assistant Secretary
Robert Kinnin	Assistant Chair/Assistant Secretary
John Morrow	Secretary (arrived 8:30 a.m.)
David O'Halloran	Chair
Steve Perfit	Treasurer

The following agency members were absent:

Michael Horodyski	Assistant Chair/Assistant Secretary
James Malcolm	Assistant Chair/Assistant Secretary

UCDC Staff:

Melinda Beuf  
Linda Clark  
Lance Matteson

UCIDA Attorney and Bond Counsel:

A. Joseph Scott	Hodgson Russ LLP
-----------------	------------------

Additional Attendees:

Jessica DiNapoli	Times Herald Record
March Gallagher	Representing the Office of the County Executive
Wayne Graff	Attorney, Representing Kingston Hospitality
James Maloney	Assessor, Town of Ulster and Chair Ulster County Economic Development and Tourism Committee
Jay Modhwadiya	Kingston Hospitality
Nick Pizza, III	Hudson Valley Domicile a/k/a Hudson Valley Sportsdome
Nick Pizza, IV	Hudson Valley Domicile a/k/a Hudson Valley Sportsdome

Chair David O'Halloran called the meeting to order at 8:07 a.m.

**PLEDGE OF ALLEGIANCE**

The members of the Agency participated in the Pledge of Allegiance to the flag.

**APPRECIATION**

On behalf of the members of the Ulster County Industrial Development Agency, Chair O'Halloran thanked outgoing CEO Lance Matteson for his years of service to the Agency. He wished Mr. Matteson the best in his future endeavors.

### **PUBLIC COMMENT**

Chair O'Halloran opened the meeting for Public Comment. There being no individual(s) requesting the privilege of the floor, Chair O'Halloran closed the Public Comment segment of the Agenda.

### **MINUTES**

**Motion:** Robert Kinnin, seconded by Paul Colucci, moved to approve the Minutes of the April 18, 2012 meeting. A copy of said minutes is on file.

**Vote:** The motion was adopted.

### **FINANCIALS**

**Motion:** Steve Perfit, seconded by Paul Colucci, moved to approve the financials for the period ending May 31, 2012. A copy of said financials is on file.

**Vote:** The motion was adopted.

### **PROJECT MONITORING AND ENFORCEMENT**

Chair O'Halloran explained to the members of the Agency that these project monitoring discussions come as a result of our policies whereby we review all active projects annually for compliance and additionally, we try to visit projects at least every two years. Staff has been asked to have open discussion with projects that are under performing; why they are under performing, what are the circumstances for their under performance and whether there is some light at the end of the tunnel to get these companies back into compliance.

### **Kingston Hospitality**

Melinda Beuf stated that the end of the year is the time frame when the survey of jobs is held. This is the cyclical lowest time of the year for Kingston Hospitality; hence they appear on the under performing report.

Mr. Wayne Graff, attorney, addressed the members of the Agency on behalf of Kingston Hospitality. Mr. Graff stated that it was his belief that the job creation for Kingston Hospitality was 29 employees. He thought that they had established a base level; on occasion it is less than 29 and at other times it is more than 29; at the end of last week it was 26. Basically that is the level at which they can operate and be competitive. Their level of employment is higher than that of local competitors. Kingston Hospitality is a real success; in 2010 it was rated Number 1 in New York State. Their ratings right now are Number 3 in the state. They consistently hire ... in 2008 they had 48 W-2's; 2009 they had 37 W-2's. Employees come and go; people don't work out they have to let them go. If you have a valuable employee, during peak season you may pay them overtime rather than hire someone that you will eventually have to let go shortly thereafter. In 2010 they had 42 employees; 2011 37 employees, this does not include the officers and/or directors who also draw income. As far as vendors, you can't place people who are hourly on this report. Last year they had local vendor contracts in the amount of \$219,000. They have more employees than the Marriott Courtyard. If you looked at it during the summer you may see 29 employees. At the time they took the snap shot they were at 26. They have found the level of efficiency of operation at which they are still able to maintain the top 5-10% in the Hampton Inn chain. In addition, an additional hotel in New Paltz is underway. They are investing a significant amount of money in the county.

Steve Perfit asked what the occupancy rate was.

Mr. Modhwadiya responded 76-78%.

Chair O'Halloran outlined the benefits received by the project: Leaseback Transaction, Sales Tax benefits, Mortgage Recording Tax benefit and a PILOT. The PILOT is still in effect, therefore, it is an active project. A previous board reviewed the investment in the community, future improvement of the tax base by that investment, the employment provided by the applicant and based upon these, made a decision to grant these tax incentives to encourage development in the Town of Ulster of the Hampton Inn. In review, they are 97% compliant; they have completed the investment, they built the building, they opened and established an ongoing business that provides sales tax revenue to the county, state and the town and within 10% of their employment goals.

Chair O'Halloran asked counsel to review the process and procedures available to us to amend applications if that is appropriate and is able to be done. If not, we will just leave it where it is. Kingston Hospitality is a success and the Agency is of course glad to have you in Ulster County. We do not want to put you "in the pot" with potential companies that may have exaggerated their potential employment to receive tax benefits. Kingston Hospitality is not one of them. The Agency is dictated by our policies and procedures to review all applicants that are under performing whatever that percentage may be.

Ms. Beuf stated that the ABO stated that we cannot amend the original numbers because that is the data the original board used to make their decision.

Agency Counsel A. Joseph Scott responded that he would follow up to see if there are any other steps the Agency can take. Bear in mind that the application was filed in 2006, there were reasonable expectations on the part of the applicant, the project closed a year and a half later, he was sure that there were efficiencies and changes in how the business is operated that may have impacted the numbers.

Chair O'Halloran questioned counsel about the Agency's internal policies of governance. Could the Agency internally amend its policy to a 10% leeway within the applicant's stated goals to keep them in compliance and not be a non-compliant company?

Counsel Scott responded that the policies belong to the Agency; you can certainly amend them.

Chair O'Halloran thought that this may be an issue for the Governance Committee.

### **Hudson Valley Domicile a/k/a Hudson Valley Sportsdome**

Ms. Beuf stated that the Hudson Valley Sportsdome was a 2004 project. Zoning and planning difficulties have all been resolved. This is an entirely new business for the project owners so their estimations of full time employees versus 1099's were not accurate. They do an enormous amount of 1099 employment; they bring in a tremendous amount of tourism. The spirit of the application is there but the actual employment is not. The current full-time employment is 2.

Mr. Nick Pizza addressed the members of the Agency and gave a brief overview of the history of his idea of offering the community a sporting facility. He and his wife visited a number of existing sporting facilities around the United States and Canada, noting a variety of things i.e. number of bathrooms, size of the facility, type of sporting events etc. The problem is that their anticipated full time people based upon the gathered information isn't anywhere close to where it should be. Their 2004 business plan projected full time people that were going to work 12 months out of the year. Currently, the project is comprised of two acres of indoor artificial turf that is covered with this vinyl fiberglass support material that is called a dome. It is 66 feet tall, 220 feet wide and 440 feet long. Sometimes four games are on going at a time. In 2004, they anticipated, like the other facilities, that they would operate 12 months out of the year.

They anticipated that they would be doing more and more in the communities such as camps. As they went into the following years, they "morphed". They found no one wanted to pay to come inside during the summer months; as a result they scaled back their offerings and today they operate from September 1st to May 1st. Because of that and the nature of the events that they do, there is no need to have full time people. It would be an absolute waste of money. 15-18 high school students are usually employed at large events. All contested events must be refereed. At Saturday or Sunday events there are at least 20 referees at a tournament. Between September and May, it is estimated that 350,000 people come into the facility. (A copy of the events schedule is on file). The main thrust of attendance is Saturday and Sundays. On any given Saturday or Sunday during a soccer tournament they will experience 10,000 to 15,000 attendees. Participants and their families are staying locally and using local services. Truthfully, he did not foresee any additional hiring of full time people.

Chair O'Halloran asked if the part-time students that work on weekends, are they paid by 1099s or are they paid through regular payroll 941s.

Mr. Pizza replied regular payroll.

Chair O'Halloran asked Ms. Beuf so when you did the review of this project, you took all those part-time hours added them together and divided by 35 and you still only came up with two jobs?

Ms. Beuf responded that she would have to consult with Lisa Fadelici who compiled the numbers in December.

Chair O'Halloran would like the numbers verified and presented to the board next month.

Chair O'Halloran asked if the refs were paid by Mr. Pizza or by an organization.

Mr. Pizza responded both. Some of the events are hosted by us and we pay the refs direct. Other times the refs are paid by the Association.

Chair O'Halloran stated that all the events at your facility, say a baseball game or a soccer game, either you are making direct payments to the refs individually, or you are paying an organization for the refs.

Mr. Pizza confirmed the statement.

Chair O'Halloran stated that because of the seriousness of the under performance, from a total of 24 potential jobs to 2, he requested that Mr. Pizza compile a list of those 1099s and to provide any written summary and/or additional information for the review of the Agency. This application received a PILOT, leaseback benefits, sales tax benefits and mortgage recording tax benefits. Although estimated tax benefits were included within the original application, actual figures were requested for the next meeting of the Agency.

Additionally, Chair O'Halloran stated that the Sportsdome is a 2004 application, since that time, the Agency began implementing clawbacks, where we can review an application and determine whether or not it has fulfilled its promises in the application to that board and determine whether the tax benefits that were received were fair balanced to the community that provided them. With the information that you have presented today and with the additional information requested, he felt that the Agency would be able to make a decision moving forward. But in your case, and counsel will have more information next month, he did not believe that those provisions were in place at the time of your application. So there is likeliness, regardless of the determination, that we may not have the ability to do a clawback. If, for example, this Agency determines that that is a necessary procedure in this case, he was not sure that we could move forward with that. You will be informed of that as well.

Counsel Scott responded that the policy had not been enacted at that time.

Chair O'Halloran felt that after the review of the part-time employees and the refs that we may very well come close to your estimates. However, we won't know that until next month. Additionally, Chair O'Halloran stated that you had a vision, you made the investment; the business model has changed based upon the reality of the operations. He thought the biggest confusion is the refs and how they are paid and that doesn't work well with our reporting. The Agency recognizes the tremendous tourism impact the project provides to the county, and the sales tax generated directly and indirectly.

#### **Hudson River Valley LLC a/k/a Head Trauma Center**

Counsel Scott reported the documents are substantially in final form and he expects to have them signed within the next week or so. All payments are current – current PILOT payments and the monthly PILOT payments on the settlement. The SOMYMA issue has been resolved.

Chair O'Halloran stated that Supervisor James Quigley, Town of Ulster, has requested that those documents be available to him and his board next Thursday (a week from tomorrow).

#### **Birchwood Village**

Counsel Scott reported that a Formal Request for Arbitration on the valuation of the property during one of the years that the property was subject to the PILOT Agreement was received. A copy of said request is on file. The PILOT Agreement does provide for arbitration of the assessed value of the property. The way it works arbitrators are picked by the UCIDA, the City of Kingston and the company. The three arbitrators meet and hear evidence and reach a determination. He will indicate to the applicant that the Agency will respond to them when they are ready to move forward. He will communicate with Melinda to consider an arbitrator. Perhaps they will reach out to James Maloney and/or the City Assessor to see if they have any suggestion(s) on who we should select. Any costs incurred by the UCIDA under this process are the responsibilities of the applicant, Birchwood Village. He will make it clear that we will not move forward until we have assurances from them.

Chair O'Halloran stated that he would like to have an escrow.

Counsel Scott responded that perhaps the final legal fees that were incurred in connection wrapping up the matter could be cleaned up as well.

Chair O'Halloran stated that he has asked counsel to send a letter acknowledging their request and at the same time informing them that in order to move forward they need to satisfy their outstanding legal balances we have with their default. We will also, with the Agency's consent, once counsel has an estimate on what an arbitrator will cost us and once we have that, to include that in the letter and ask for an escrow account for that.

Robert Kinnin asked if that would go to the taxing jurisdictions, correct.

Chairman O'Halloran stated no – we are not talking about the tax right now. He clarified by stating that Birchwood Village owes a small amount of late fees for the work that was done a few months ago. He would like to get the money up front in an escrow account for the estimated cost of an arbitrator. Once we have those we will move forward with coordinating the arbitration. Is that comfortable with the members? There was agreement by those Agency members present. Chair O'Halloran requested that counsel follow through on that.

Counsel Scott wished to repeat what was reported at the last meeting, the property is formally on the tax roles. It is subject to real property tax on a going forward basis. This is just looking back at one or two years within the term of the PILOT Agreement.

Steve Perfit asked if the Agency has the ability to RFP for impartial arbitrator of our choice, probably someone outside Ulster County.

Counsel Scott responded affirmatively.

Steve Perfit stated it is more or less a boiler plate project, a generic project; there is a formula where an expert in the field will be able to say that he has done these before they know what the value is. It should probably be someone with an appraisal background.

Chair O'Halloran stated that we will solicit for bids.

Mr. Perfit recommended statewide, north of New York City.

Mr. Kinnin asked what the timeframe for the arbitration process.

Chair O'Halloran explained that we set the time frame, we get our side done at which time we will ask them for theirs and then they will coordinate meetings. We want to move in an expeditious manner but also in a prudent manner.

John Morrow asked if counsel knew how long it takes for arbitrators in a process like this to make an actual decision.

Counsel Scott responded that under our PILOT Agreement this is our standard language and we've only seen it threatened once and we've actually never seen anyone go through the arbitration process. The theory of arbitration and the reason why people put it in the documents is that it is suppose to go faster than an Article 7 process, the normal way you contest your assessment. He felt it was a question on how fast the applicant pushes the three arbitrators.

### **INTERIM CEO REPORT**

Interim CEO Melinda Beuf reported as follow:

- Leads for the UCIDA – 11
- Leads Pending – 2 (Wolf-tec and Stavo) waiting for closing dates
  - The MOU for storm drainage has been accepted and we are now waiting for a Shovel Ready Application from the City of Kingston
- Simhara of the Heart Application (Body of Truth) – returned to applicant for amendment/correction - consideration postponed until the July meeting
- Operationally.
  - Press Release issued by the Ulster County Legislature requesting a Summary Report from the Agency. A copy of said Press Release is on file.

- As part of the Summary Report there are errors in PARIS with the input of incorrect data. The reason some of the data is incorrect is that past ABO reports were used, as well as non-source documentation. As part of looking at the Summary Report, she has requested that we look at source documentation opposed to non-source documentation. A request to the ABO to make corrections where appropriate was made. A rather firm letter was received from the ABO telling us that some of the data that is now required was not required at that point in time and that will need to fill it out. We responded, that in the spirit of the ABO, the data that they wanted to see is the data that the board used to make its' decision, as such, any regs that were not in place at the time should not be required, because the board did not make their decision based upon future regs.

Chair O'Halloran stated that with reference to the Press Release issued by Minority Leader Donaldson, he has asked staff, regardless of whether or not the resolution is passed by the Legislature, to provide the report(s) requested, in the format that it is requested. It is not in the same format that we provide the ABO, it is the same information. We are not providing any new information, we are just re-formatting it. When Ms. Beuf took over the position, explained that there were over and under stated errors in the ABO reports when compared to the original applications. After discussion, it was very simple, beginning a brand new tenure as our director, make it right. Work with counsel, the ABO, get everything right once. We are doing all the due diligence to make sure our reporting for this board and Ms. Beuf's responsibility of it is correct. All of that will be provided to the ABO. As far as the Legislature we will provide it as often as they require it. The more information we can give to the Legislature and to the public is beneficial to us. Additionally, this report will go online.

Continuing, Ms. Beuf reported:

- In view of Mr. Matteson's departure she is transitioning in order to understand everything that he had been working on. Additionally, there is a RFP out for the controller's position. Ms. Beuf has been meeting with accounting firms regarding same. The receptionist has been let go and will be leaving at the end of June. There is a tremendous transition with staff.

Chair O'Halloran stated that UCDC's budget was reduced in 2012. The UCDC Board has made changes to the staff that services us via contract ... the elimination of the receptionist and the outsourcing of the accounting. They are looking at reducing costs. Chair O'Halloran stated that the Agency's concern is that they can make as many changes as they want as long as our services are maintained as contracted.

Continuing Ms. Beuf reported:

- Bi-Annual Visits for the UCIDA – completed 14 - 25 to go
- Working with counsel on the Agency's response to the ABO letter regarding Grants
- Letter to state legislature that requires the Chairman's approval
- Working with Hudson Valley Film Commission to solicit grant funding
- Working on the Agency's web-site
- Received Quotes - Ready to Go Brochure

Chair O'Halloran thanked Steve Perfit, John Morrow and Ms. Beuf for their efforts in assisting the Hudson Valley Film Commission with meetings/presentations to other counties within the Hudson Valley. The Agency has taken a proactive position that the Film Commission is an industry that is much needed in Ulster County and its benefit also benefits the region.

Steve Perfit asked if the Hudson Valley Film Commission was going to participate in the Consolidated Funding Application (CFA).

Ms. Beuf responded that at meetings with Columbia and Greene counties, a CFA for the film industry was mentioned and both counties thought that it was a good idea. Since the announcement of the CFA, an initial email was sent to both counties stating that the CFA was out there, what is your expectation of a CFA for the film industry. No responses have been received. Mr. Rejto, Hudson Valley Film Festival, does have an assistant that can help with the grant. Ms. Beuf has offered to assist in the grant, but at this time she did not have the time to write the grant.

Mr. Perfit suggested Brian Gates of Hudson Valley Economic Development Corporation may be of assistance.

### **OLD BUSINESS**

#### **Authorities Budget Office Correspondence - Grants**

Chair O'Halloran reported that counsel and he have been working on a response to the ABO regarding the awarding of the three grants in 2011. The grants were awarded to the Hudson Valley Film Commission (\$40,000), Hudson Valley Agri-Business (\$25,000) and Ready2Go (\$50,000). Those three have been particularly questioned by the ABO as to whether or not they meet our mission, and whether the benefits are within economic benefits. We believe that they are and that our supporting documentation will support that.

#### **Trade Show Grants**

Chair O'Halloran postponed discussion of trade show grants to the July meeting.

### **COMMITTEE REPORTS**

Governance Committee. Committee Chair John Morrow reported that the Governance Committee had met on June 4, 2012 and discussed among other things, the Uniform Tax Exemption Policy and the Fee Schedule Guidelines.

- Uniform Tax Exemption Policy (UTEP). The proposed amendment appears on Page 9 of the document. Discussion included, but was not limited to, the alleviation of issues that percentage of exemption create, a dollar amount eliminates the applicants rights to certiorari arguments which is a benefit to the community; affordable housing, senior housing, student housing, workforce housing need stabilized fixed amounts, but should be taxable properties; what is missing in this amendment is the duration of the PILOT.

Counsel suggested that after surveying some housing individuals with reference to the \$50 per unit number, and they provided mixed reviews as to whether or not that number was in the "ball park". Consideration may be to adopt this policy, but give staff the time to report back to you informally with a multi-tiered approach whereby the per unit number for workforce is different than the per unit number for affordable housing. Perhaps a way to look at this is to create different per unit charges for each of these four categories and give us a little more time to come up with these numbers. This could be done in the next week or so.



Chair O'Halloran agreed that for affordable housing this proposal was "above the mark". They are between \$300-450/year per unit; this proposal is \$600/year. With the Agency's approval he would like to move forward with this.

Mr. Morrow asked if this must be referred by to Governance or can it be amended here? He thought that we could simply add a statement that affordable housing would be 60% of the amount stated.

Chair O'Halloran stated that the 60% would address affordable housing, our question is that we still have left senior housing. The problem with senior housing is age. Senior housing has a large spectrum of types – very affordable housing to keep seniors in the community, very large high-end housing designed for high end assistance and medical care. What he would like to do is adjust to affordable housing with an amendment today and ask counsel to do more research in language for senior housing.

Mr. Maloney suggested that real senior housing projects should have an age requirement of a minimum of 62 years.

Chair O'Halloran stated that senior housing is going to require an amendment.

March Gallagher commented that it is not clear to her regarding the multiple tenancies and how that is counted and in addition, COLA in itself is considered a social security adjustment. CPI may wished to be considered as well; CPI is calculated by the Bureau of Labor Statistics and as you refine the policy, you may wish to put in the exact term as to what inflation calculator you are actually going to use so that it is clear to you and cannot be changed later by an argument by an applicant.

Chair O'Halloran responded that for now, we will leave COLA; when we do the senior housing amendment we will change it to a more defined CPI.

The proposed amendment to the Uniform Tax Exemption Policy is as follows:

**Add**

(e) Category 5: Notwithstanding anything herein to the contrary, if the project consists of workforce housing projects, dormitory housing projects, affordable housing projects and/or senior housing projects, the applicant shall make annual payments in lieu of property taxes pursuant to the PILOT Agreement with respect to the project as follows:

- (i) PILOT payments would be fixed at \$50 per unit monthly or \$25 per bedroom monthly, whichever is higher; affordable housing (per HUD definition) will be at 60% of the above per unit rate;
- (ii) A Cost of Living Adjustment (COLA) will be assessed annually;
- (iii) The amounts payable under the PILOT Agreement with respect to the housing project shall be payable at the times normal taxes are billed and collected, and allocated among the affected tax jurisdictions in proportion to the tax rates of such affected tax jurisdictions in accordance with section 858(15) of the Act, and
- (iv) The duration of the PILOT shall be twenty-five (25) years.

**Motion:** John Morrow, seconded by Steve Perfit, moved to adopt the proposed amendment to the Uniform Tax Exemption Policy and to implement the Public Hearing process.

**Vote:** The motion was adopted.

It was noted that the Public Hearing Notice needed to be 30-days.

- Fee Schedule Guidelines. The proposed amendment to the Fee Schedule Guidelines is to define the costs associated for photocopying and scanning for the satisfaction of FOIL requests. It was noted that individuals may view the requested materials at no cost should the review take place in the offices.

Counsel Scott stated that there may be a statutory provision within the FOIL rule regarding these numbers. He would like to confirm the numbers. If the numbers are set forth in the statute the agency cannot deviate from that.

The proposed amendment to the Uniform Tax Exemption Policy is as follows:

**Add**

Section 6. FOIL REQUESTS

When Freedom of Information Law (FOIL) Requests are received, the Agency fee(s) associated in fulfilling said request(s) are 15¢ per scanned page and/or 35¢ per photocopy.

**Motion:** John Morrow, seconded by Paul Colucci, moved to approve the Fee Schedule Guidelines as amended with the confirmation of the numbers by Agency Counsel.

**Vote:** The motion was adopted.

**Audit Committee.** Committee Chair Steve Perfit had no report as the committee had not met. It is anticipated that they will meet in July.

**Ready2Go Committee.** March Gallagher, a member of the Ready2Go Committee reported that a successful meeting was held May 17, 2012 with the Town of Saugerties. Participation included, with the exception of Central Hudson, the full membership of the Ready2Go Committee, as well as the Town Supervisor and building code enforcement officers. It is anticipated that the first Ready2Go project will be introduced in a conceptual way to the Town of Saugerties Planning Board at the June 21, 2012 meeting. There are a number of other sites under consideration that need to be "put through" the process ... specifically one in the Town of Lloyd. The idea was to get the first project underway and then do another call for properties over the summer.

Chair O'Halloran stated that the Agency Board will need a narrative, from a mission statement point of view, for the Authorities Budget Office (ABO). He inquired as to whether or not the Committee would be the entity to provide that.

Ms. Gallagher responded that the Ulster County Development Corporation (UCDC) is administering the funds; she thought that was where the request should be directed. It was her belief that UCDC would be relying on the committee to provide any type of description of the project.

It was concluded that in the next several weeks Melinda Beuf and the members of the committee would provide a narrative that could be used as supporting grant documentation for the ABO.

**NEW BUSINESS**

**EXECUTIVE SESSION**

**Motion:** Robert Kinnin, seconded by Paul Colucci, moved to adjourn into Executive Session at 9:31 p.m. for the purpose of discussion of a real estate matter and an attorney/client legal discussion.

**Vote:** The motion was adopted.

**Motion:** Robert Kinnin, seconded by Paul Colucci, moved to adjourn out of Executive Session at 9:39 p.m.

**Vote:** The motion was adopted.

**ADJOURNMENT**

It was unanimously agreed by all those present to adjourn the meeting.

Meeting adjourned at 9:43 a.m.

Respectfully submitted,

John Morrow  
Secretary